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Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

|                             |   |                            |
|-----------------------------|---|----------------------------|
| SIERRA CLUB,                | ) | No. 08-4248 SC             |
|                             | ) |                            |
| Plaintiff,                  | ) |                            |
|                             | ) | STIPULATION AND [PROPOSED] |
| v.                          | ) | ORDER TO CONTINUE CASE     |
|                             | ) | MANAGEMENT CONFERENCE      |
| UNITED STATES DEPARTMENT OF | ) |                            |
| AGRICULTURE ET AL.,         | ) |                            |
|                             | ) |                            |
| Defendants.                 | ) |                            |

IT IS HEREBY STIPULATED by and between the undersigned, subject to the approval of the Court, that the Case Management Conference currently scheduled for May 29, 2009 at 10:00 a.m. be continued to July 10, 2009 at 10:00 a.m. (a date obtained from the Court's clerk as an available date and time). This stipulation was agreed to by all of the parties (including the Intervening Defendants -- Brazos Electric Power Cooperative, Inc. and East Kentucky Power Cooperative, Inc.) for the following reasons. The Federal Defendants provided draft *Vaughn* indices to the Plaintiff on April 27, 2009 but have not yet produced any records to Plaintiff. The reason for the delay in production is that the Federal Defendants and Intervening Defendants are working this month to complete the process of reviewing the records at issue in this FOIA case (the Federal Defendants had completed their review of the many thousands of pages of records at

1 issue by April 24, 2009, but the Intervening Defendants have not yet been able to review the  
2 records) so as to determine which documents will be released to Plaintiff and which documents  
3 will be withheld. This process is time consuming because many of the records at issue involve  
4 various submissions from the Intervening Defendants that potentially implicate FOIA Exemption  
5 4 (which concerns trade secret and confidential or proprietary business information) and the  
6 Federal Defendants are consulting with the Intervening Defendants in person in Washington D.C.  
7 during the next couple of weeks. Thus, at this point the parties do not know the extent of the  
8 potential dispute about the records or the best approach for resolving those potential disputes.  
9 Indeed, because of the nature of litigation involving FOIA's Exemption 4 it is not yet known  
10 whether or not there will be disputes between the Intervening Defendants and the Federal  
11 Defendants. The Plaintiff and Intervening Defendants (whose counsel would have to travel from  
12 Washington, D.C, Texas and Kentucky) would like to avoid the expense of attending a Case  
13 Management Conference on May 29, 2009 that none of the parties believe would be productive  
14 given the current uncertainties about the nature and scope of the issues in dispute. The parties  
15 submit that it would be more cost effective to hold the Case Management Conference on July 10,  
16 2009, at which time the parties will be prepared to present a plan or competing plans for the  
17 resolution of the case along with a timetable for the resolution of the case. The parties represent  
18 that they have been working diligently on this case and will continue to do so. They request the  
19 extension of time so that they may hold a Case Management Conference at such time as they will  
20 have clarity about any items in dispute, the parties to the dispute, and a proposed mechanism for  
21 resolving any dispute.

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The parties propose to file a Joint Statement at least ten days prior to the continued CMC in which they will specify the nature of any disputes and will proposed mechanism for resolving the dispute, whether that be by means of an ADR process, by motion, or by combination of the two. The date of the CMC was continued previously one time.

Respectfully Submitted,  
 May 7, 2009 /s/ William S. Eubanks II  
 William S. Eubanks II  
 Howard M. Crystal  
*Pro hac vice*  
 Meyer Glitzenstein & Crystal

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/s/ Michael T. Pyle  
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/s/ James Goldberg  
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 Deborah A. Goldfarb  
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*Attorneys for Intervening Defendants Brazos Electric Power Cooperative, Inc. and East Kentucky Power Cooperative, Inc.*

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

The Case Management Conference will be held on July 10, 2009 at 10:00 a.m. The parties shall file a Joint Case Management Statement no later than 10 days prior to the Case Management Conference.

DATED: May 8, 2009

HON. SAMUEL CONTI  
 United States District Judge

